

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

<b>JON'TA TOMORREEA HAMPTON-BEY,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>1:09CV777</b>
	)	
<b>ALVIN W. KELLER, JR.</b>	)	
	)	
<b>Respondent.</b>	)	

**RECOMMENDATION AND ORDER**  
**OF UNITED STATES MAGISTRATE JUDGE**

Petitioner, a state prisoner, has submitted a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 together with an application to proceed *in forma pauperis*. This petition cannot be further processed because court records reveal that Petitioner has already attacked the same conviction and sentence in a previous § 2254 petition [1:08CV93]. Consequently, Petitioner must apply to the Fourth Circuit Court of Appeals for an order authorizing this district court to consider the current petition. This is required by 28 U.S.C. § 2244(b)(3)(A). See AO 241 (MDNC 3/97), *Instructions*, paragraph 5, which is enclosed. Because of this pleading failure, this particular petition should be dismissed. *In forma pauperis* status will be granted for the sole purpose of entering this Recommendation and Order.

**IT IS THEREFORE RECOMMENDED** that this petition be dismissed for failure to apply to the Fourth Circuit Court of Appeals for an order authorizing this district court to consider the current petition as is required by 28 U.S.C. § 2244.

**IT IS THEREFORE ORDERED** that *in forma pauperis* status is granted for the sole purpose of entering this Recommendation and Order.

**IT IS FURTHER ORDERED** that the Clerk shall send Petitioner a copy of this Recommendation and Order and instruction forms for filing § 2254 petitions in this Court and Motions for Authorization in the court of appeals, an application to proceed *in forma pauperis* (upon request), and four copies of § 2254 petition forms (more copies will be sent on request). Petitioner should keep the original and two copies of the § 2254 petition which can be submitted in this Court if Petitioner obtains approval from the Fourth Circuit.

/s/ Donald P. Dietrich

**Donald P. Dietrich, U.S. Magistrate Judge**

October 15, 2009